

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAMELA LEWIS, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
LYCOMING, et al.	:	NO. 11-6475

MEMORANDUM

Bartle, J. April , 2013

Before the court is the motion of the plaintiffs for voluntary dismissal of Precision Airmotive Corporation and Precision Airmotive LLC (together, the "Precision defendants") under Rule 41(a)(2) of the Federal Rules of Civil Procedure. While the Precision defendants have joined the plaintiffs' motion, the remaining defendants, Avco Corporation, Lycoming Engines, Textron Systems Corporation, Textron, Inc., Schweizer Aircraft Corporation, Schweizer Holdings, Inc., Sikorsky Aircraft Corporation, United Technologies Corporation, and Champion Aerospace LLC (collectively, the "non-Precision defendants"), are opposed. Since answers have been filed, any dismissal requires court approval.

The plaintiffs are Pamela Lewis, individually and as personal representative of the estate of Steven Edward Lewis, deceased, and Keith Whitehead and John Wroblewski as co-personal representatives of the estate of Philip Charles Gray, deceased. The decedents, British subjects and residents of the United Kingdom, were killed in a helicopter crash on September 22, 2009

near Blackpool in Lancashire, England. All of the defendants allegedly played some role in either the design, manufacture, assembly or sale in the United States of the helicopter or its parts.¹ The complaint contains claims for damages on theories of product liability, negligence, breach of warranty, and concert of action.

The lawsuit was originally commenced in the Court of Common Pleas of Philadelphia County. Defendants removed it to this court, which thereafter denied the motion of the plaintiffs to remand. See Lewis v. Lycoming, No. 11-6475, 2012 U.S. Dist. LEXIS 88905 (E.D. Pa. June 27, 2012). Defendants later moved to dismiss on the ground of forum non conveniens, and this court also denied that motion. See Lewis v. Lycoming, No. 11-6475, 2013 U.S. Dist. LEXIS 3845 (E.D. Pa. Jan. 10, 2013). However, while the motion to dismiss on the ground of forum non conveniens was pending, the Precision defendants filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the Western District of Washington. The Precision Defendants' bankruptcy filing automatically stayed the instant litigation against the Precision Defendants. See 11 U.S.C. § 362(a). We thereafter entered an order denying the motion to dismiss as to all the defendants except the Precision Defendants. As to them, we held our decision in abeyance pending the automatic stay.

1. Some defendants are alleged to be alter egos of other defendants.

The Precision defendants allegedly manufactured the fuel injector servo in the helicopter that crashed. Plaintiffs aver that this component caused or contributed to the loss of power that resulted in the crash. Plaintiffs are the only parties in this action who have asserted claims against the Precision defendants. No crossclaims have been filed. Nor has any party moved to lift the stay in the bankruptcy court.

Immediately after the motion to dismiss on the ground of forum non conveniens was denied, the Precision defendants informed all parties that it would object to any inspection of the aircraft wreckage, presently located in Delaware, as a violation of the automatic stay and would attempt to prevent any such inspection from going forward. Subsequently, plaintiffs reached an agreement with the Precision defendants to dismiss them voluntarily from the case, and in return the Precision defendants would withdraw their objections to the inspection of the aircraft wreckage. At oral argument on this motion, the parties explained to the court that some inspection and testing of the helicopter and its component parts has already occurred, and defendants and their experts were present at these inspections and testings. The non-Precision defendants, as noted above, object to the dismissal of the Precision defendants.

Under Rule 41(a)(2) of the Federal Rules of Civil Procedure, plaintiffs may move the court for the voluntary dismissal of any party "on terms that the court considers proper." Our Court of Appeals has characterized its attitude

toward voluntary dismissals under Rule 41(a)(2) as "a liberal policy" and has held that "Rule 41 motions 'should be allowed unless defendant will suffer some prejudice other than the mere prospect of a second lawsuit.'" In re Paoli R. Yard PCB Litigation, 916 F.2d 829, 863 (3d Cir. Pa. 1990) (quoting 5 J. Moore, Moore's Federal Practice para. 41.05[1], at 41-62 (1988)).

Motions filed pursuant to Rule 41(a)(2) should be granted unless dismissal would cause substantial prejudice to the defendant. Young v. Johnson & Johnson Corp., No. 05-2393, 2005 U.S. Dist. LEXIS 26232 (E.D. Pa. Nov. 2, 2005) (citing Miller v. Trans World Airlines, Inc., 103 F.R.D. 20, 21 (E.D. Pa. 1984)). To determine whether any prejudice is substantial, courts have considered the following factors: "(1) whether the expense of a second litigation would be excessive and duplicative; (2) how much effort and expense has been expended by the defendant in preparing for the current trial; (3) the extent to which the current suit has progressed; (4) the plaintiff's diligence in [filing] the motion to dismiss; and (5) whether the attempt at dismissal is designed to evade federal jurisdiction and frustrate the purpose of the removal statute." Peltz v. Sears, Roebuck & Co., 367 F. Supp. 2d 711, 715 (E.D. Pa. Mar. 8, 2005) (citing Total Containment, Inc. v. Aveda Mfg. Corp., 1990 U.S. Dist. LEXIS 16637, 1990 WL 290146, at *2 (E.D. Pa. Dec. 7, 1990)).

The non-Precision defendants first contend that dismissing the Precision defendants at this juncture would be a violation of the automatic stay. Although we noted in our prior

decision on the motion of the defendants to dismiss on the ground of forum non conveniens that we would not decide the motion as to the Precision defendants but rather hold the motion in abeyance pending the stay, the situation here is quite different. See Lewis v. Lycoming, No. 11-6475, 2013 U.S. Dist. LEXIS 3845 (E.D. Pa. Jan. 10, 2013). We are now faced with a motion for voluntary dismissal, to which the Precision defendants and the plaintiffs agree. In our forum non conveniens decision as well as in Pope v. Manville Forest Products Corp., which we cited, the plaintiff opposed the dismissal of the defendant in bankruptcy. 778 F.2d 238, 239 (5th Cir. 1985). The court in Pope noted that it did not wish its decision to "impede the district court in maintaining a current docket." Id.

Pope has been interpreted narrowly in Arnold v. Garlock, 288 F.3d 234, 236-37 (5th Cir. 2002). In this case, the Fifth Circuit specifically differentiated between the Pope case, in which the issue was "protecting a plaintiff's direct claim under Title VII from the preclusive effect of another court's ruling" and the case before it which involved the question of "whether to permit a plaintiff to voluntarily dismiss a claim under [Rule] 41(a) and a district court's interest in granting such a motion." Id. at 236.

Furthermore, in Zelaskowski v. Johns-Manville Corp., a court within our circuit permitted the plaintiff to file an amended complaint in which it deleted a defendant despite an automatic stay resulting from its bankruptcy proceeding. 578 F.

Supp. 11, 17 (D.N.J. 1983). The court reasoned that the dismissal would "not contravene the purpose of the stay provision." Id. Under the present circumstances we do not view the automatic stay as precluding this court from dismissing the Precision defendants if we find that the non-Precision defendants would not be substantially prejudiced by the dismissal. See Id. at 236-37.

The non-Precision defendants contend that they will be substantially prejudiced because the Precision defendants, as alleged joint tortfeasors, are necessary parties to this case since many if not all of the claims allege a defect in the fuel injector servo, which they manufactured and designed. The non-Precision defendants also argue that because of this, they will be prejudiced if the Precision defendants are not on the verdict sheet at trial. These arguments fail because a joint tortfeasor is never an indispensable or necessary party under Rule 19 of the Federal Rules of Civil Procedure. See Temple v. Synthes Corp., 498 U.S. 5, 7 (1990).

The plaintiffs are not settling with the Precision defendants for any sum of money, but rather they are dismissing them entirely from the action. Accordingly, this situation is the same as if the plaintiffs had chosen not to sue the Precision defendants originally, which they would have been free to do. The absence of the Precision defendants on the verdict sheet at trial is no different from the verdict sheet in any other situation where potentially liable parties were not sued.

Moreover, the non-Precision defendants have not filed any crossclaims against the Precision defendants at this time. Indeed, the automatic stay prevents the defendants from doing so outside the bankruptcy proceeding.

The non-Precision defendants also argue that they would be prejudiced by the dismissal of the Precision defendants because they will not be able to rely on evidence at the disposal of the Precision defendants, such as documents supporting the design and manufacturing integrity of the fuel servo. However, even if the Precision defendants remain in this action, the non-Precision defendants would not be able to seek such discovery without violating the automatic stay. [Insert analysis about seeking discovery through procedures of the Bankruptcy Court after we receive supplemental briefing.]

The non-Precision defendants maintain that proceeding with the inspection of the helicopter if Precision is dismissed would prejudice any eventual claims against the Precision defendants for contribution and indemnification because the non-Precision defendants could be subject to sanctions for spoliation of the components designed and manufactured by the Precision defendants.

We cannot predict any future spoliation claims, and the non-Precision defendants have not provided any case law in which this issue occurred in the past. Moreover, as noted above at least some inspection and testing of the fuel servo has already occurred, with defendants and their experts present. We also

find it significant that counsel for the Precision defendants have explicitly stated that they do not object to the inspection and testing going forward if the Precision defendants are dismissed from the action.

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ORDER

AND NOW, this day of April, 2013, for the reasons
set forth in the accompanying Memorandum, it is hereby ORDERED
that:

(1) the motion of the plaintiffs for voluntary
dismissal of Precision Airmotive Corporation and Precision
Airmotive LLC is GRANTED;

(2) Plaintiffs claims against Precision Airmotive
Corporation and Precision Airmotive LLC are dismissed with
prejudice.

BY THE COURT:

J.